

## REMARKS

Claims 50-69 remain in the application. Reconsideration of the application in view of the amendments and the remarks is requested.

Claims 50-56 and 66-69 stand rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 1-29 and 42-45 of prior U.S. Patent No. 6,380,023. The Examiner is respectfully reminded that the Federal Circuit has approved the following test for determining if such a rejection is appropriate: “[a] good test, and probably the only objective test, for ‘same invention,’ is whether one of the claims would be literally infringed without literally infringing the other. If it could be, the claims do not define identically the same invention.” *Studiengesellschaft Kohle mbH v. Northern Petrochemical Company*, 784 F.2d 351, 228 USPQ 837, 840 (Fed. Cir. 1986) (emphasis in original) (citations omitted). That is, a difference in claim scope “do not define identically the same invention”

Independent claims 50 and 66 of the present application recite providing a substrate. Independent claims 1 and 25 of U.S. Patent No. 6,380,023 recite providing a substrate **comprising a first-type dopant** and independent claims 42 and 45 of U.S. Patent No. 6,380,023 recite providing a substrate **comprising a dopant of a first-type**. A clear difference in claim scope between claims 50 and 66 of the present application and the claims of U.S. Patent No. 6,380,023. Accordingly, claims 50 and 66 of the present application do not define identically the same invention as claims 1, 25, 42 and 45 of U.S. Patent No. 6,380,023.

Additionally, independent claims 9, 19 and 43 of U.S. Patent No. 6,380,023

recite forming insulative material. Claim 50 of the present application does not recite forming insulative material. A clear difference in claim scope between claim 50 of the present application and the claims of U.S. Patent No. 6,380,023. Consequently, claim 50 of the present application does not define identically the same invention of claims 9, 19 and 43 of U.S. Patent No. 6,380,023. Pursuant to the above authority, claim 50 does not recite the same invention as independent claims 1, 9, 19, 25, 42, 43 and 45 of U.S. Patent No. 6,380,023, and therefore, the rejection against claim 50 under 35 U.S.C. §101 as claiming the same invention is improper and should be withdrawn.

Furthermore, independent claim 66 of the present application recites forming a conductive line over a substrate. Independent claim 9 of U.S. Patent No. 6,380,023 recites forming a plurality of **conductive lines** over a substrate. A clear difference in claim scope between claim 66 of the present application and claim 9 of U.S. Patent No. 6,380,023, and therefore, the claims do not define identically the same invention.

Moreover, independent claims 19 and 43 of U.S. Patent No. 6,380,023 recite a substrate and a diffusion region being configured for biasing into a reverse-biased diode configuration. Claim 66 of the present application does not recite this limitation. A clear difference in claim scope between claim 66 of the present application and claims 19 and 43 of U.S. Patent No. 6,380,023, and therefore, the claims do not define identically the same invention. Accordingly, claim 66 does not recite the same invention as independent claims 1, 9, 19, 25, 42, 43 and 45 of U.S. Patent No. 6,380,023, and therefore, the rejection against

claim 66 under 35 U.S.C. §101 as claiming the same invention is improper and should be withdrawn.

In conclusion, claims 1, 9, 19, 42, 43 and 45 of U.S. Patent No. 6,380,023 are not the same invention as that of independent claims 50 and 66 of the present invention, and therefore, the statutory double patenting rejection against claims 50-56 and 66-69 of the present application is inappropriate and should be withdrawn.

Claims 57-65 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 and 42-45 of prior U.S. Patent No. 6,380,023. A Terminal Disclaimer is provided to overcome this rejection. Accordingly, the obviousness-type double patenting rejection against claims 57-65 is rendered moot and should be withdrawn.

No other rejections are presented against pending claims 50-69, and therefore, claims 50-69 are allowable.


Further, Applicant herewith submits a duplicate copy of the Information Disclosure Statement and Form PTO-1449 filed together with this application on March 12, 2002. A partially initialed copy of the PTO-1449 has been received back from the Examiner. To the extent that the submitted reference listed on the Form PTO-1449 has not already been considered, and the Form PTO-1449 has not been completely initialed with a copy being returned to Applicant, such examination and initialing is requested at this time, as well as return of a copy of the completely initialed Form PTO-1449 to the undersigned.

This application is now believed to be in immediate condition for allowance,

and action to that end is respectfully requested. If the Examiner's next anticipated action is to be anything other than a Notice of Allowance, the undersigned respectfully requests a telephone interview prior to issuance of any such subsequent action.

Respectfully submitted,

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